

AMENDED IN SENATE MAY 12, 1997

AMENDED IN SENATE APRIL 16, 1997

SENATE BILL

No. 1217

Introduced by Senator Johnston

February 28, 1997

An act to amend Sections ~~11734~~, 11735, 11736, and 11751.8 of the Insurance Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1217, as amended, Johnston. Workers' compensation: experience rating plans.

~~(1) Existing law requires every workers' compensation insurer to adhere to a uniform experience rating plan filed with the Insurance Commissioner by a rating organization designated by the commissioner and subject to his or her disapproval.~~

~~This bill would instead require a workers' compensation insurer to adhere to a workers' compensation plan that is predicated on either incurred loss amounts or incurred claim counts that is filed with the commissioner by a rating organization designated by the commissioner and subject to his or her disapproval. The bill would also make related changes.~~

~~(2) Existing~~

~~Existing law requires an insurer to report to its rating organization as corrections or revisions of losses, pursuant to the unit statistical plan and uniform experience rating plan approved by the commissioner, if certain events have~~

occurred. Among these events is that the claim has closed for 60% or less of its highest reported incurred value.

This bill would instead require an insurer to make the above report if the aggregate of all claims *during the experience period* have closed for 60% or less of their highest reported value. *The bill would also make various technical, nonsubstantive changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11734 of the Insurance Code is~~
2 ~~amended to read:~~
3 ~~11734. (a) Every workers' compensation insurer~~
4 ~~shall adhere to a uniform experience rating plan that is~~
5 ~~predicated on either incurred loss amounts or incurred~~
6 ~~claim counts. The experience rating plans provided for~~
7 ~~under this subdivision shall be filed with the~~
8 ~~commissioner by a rating organization designated by the~~
9 ~~commissioner and subject to his or her disapproval.~~
10 ~~(b) The commissioner shall designate a rating~~
11 ~~organization to assist him or her in gathering, compiling,~~
12 ~~and reporting relevant statistical information, and to~~
13 ~~develop a classification system. An insurer may develop~~
14 ~~its own classification system upon which a rate may be~~
15 ~~made or adopt the classification system developed by the~~
16 ~~designated rating organization. However, any~~
17 ~~classification system developed by an insurer must be~~
18 ~~filed with the commissioner 30 days prior to its use. The~~
19 ~~commissioner shall disapprove a classification system~~
20 ~~filed by an insurer pursuant to this section if the insurer~~
21 ~~fails to demonstrate that the data thereby produced can~~
22 ~~be reported consistent with the uniform statistical plan or~~
23 ~~the classification system developed by the rating~~
24 ~~organization. Every workers' compensation insurer shall~~
25 ~~record and report its workers' compensation experience~~
26 ~~to the designated rating organization as set forth in the~~
27 ~~uniform statistical plan approved by the commissioner.~~

~~(c) The designated rating organization shall develop and file manual rules, subject to the approval of the commissioner, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plans provided for pursuant to subdivision (a), and any classification systems as may be in effect. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plans in writing and reporting its business. No insurer shall agree with any other insurer or with a rating organization to adhere to manual rules that are not reasonably related to the recording and reporting of data pursuant to the uniform statistical plan or classification system developed by the rating organization.~~

~~SEC. 2.~~

SECTION 1. Section 11735 of the Insurance Code is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information that are to be used in this state. The rates and supplementary information shall be filed not later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates and the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the

1 commissioner, a rate in excess of that provided by a filing
2 otherwise applicable may be used on any specific risk.

3 (d) Notwithstanding Section 679.70, no rating
4 organization may issue nor may any insurer use any
5 classification system or rate, as applied or used, that
6 violates Section 679.71 or 679.72 or that violates the Unruh
7 Civil Rights Act.

8 (e) Notwithstanding Sections 11657 to 11660, inclusive,
9 a rating plan or supplementary rate information filed
10 with the commissioner for purposes of offering
11 deductibles to policyholders for all or part of benefits
12 payable under the policy shall be deemed complete if the
13 filing contains the following:

14 (1) A copy of the deductible endorsement that is to be
15 attached to the policy to effectuate deductible coverage.

16 (2) Endorsement language that protects the rights of
17 injured workers and ensures that benefits are paid by the
18 insurer without regard to any deductible. The
19 endorsement shall specify that the nonpayment of
20 deductible amounts by the policyholder shall not relieve
21 the insurer from payment of compensation for injuries
22 sustained by the employee during the period of time the
23 endorsed policy was in effect. The endorsement shall
24 provide that deductible policies for workers'
25 compensation insurance coverage shall not be
26 terminated retroactively for nonpayment of deductible
27 amounts.

28 (3) The endorsement shall provide that
29 notwithstanding the deductible, the insurer shall pay all
30 the obligations of the employer for workers'
31 compensation benefits for injuries occurring during the
32 policy period. Payment by the insurer of any amounts
33 within the deductible shall be treated as an advancement
34 of funds by the insurer to the employer and shall create
35 a legal obligation for reimbursements, and may be
36 secured by appropriate security.

37 (4) The endorsement shall specify whether loss
38 adjustment expenses are to be treated as advancements
39 within the deductible to be reimbursed by the employer.

1 (5) An explanation of premium reductions reflecting
2 the type and level of the deductible will be clearly set
3 forth for the policyholder.

4 (6) The filing shall provide that premium reductions
5 for deductibles are determined before application of any
6 experience modification, premium surcharge, or
7 premium discount, and the premium reductions reflect
8 the type and level of deductible consistent with accepted
9 actuarial standards.

10 (7) The filing shall provide that nonpayment of
11 deductible amounts by the insured employer to its
12 insurer, or failure to comply with any security-related
13 terms of the policy, shall be treated under the policy in
14 the same manner as payment or nonpayment of premium
15 pursuant to paragraph (1) of subdivision (b) of Section
16 676.8.

17 (f) The insurer shall report and record losses subject to
18 the deductible as losses for purposes of ratemaking and
19 application of an experience rating plan on the same basis
20 as losses under policies providing first dollar coverage.

21 ~~SEC. 3.~~

22 *SEC. 2.* Section 11736 of the Insurance Code is
23 amended to read:

24 11736. An experience rating plan shall contain
25 reasonable eligibility standards, provide adequate
26 incentives for loss prevention, and shall provide for
27 sufficient premium differentials so as to encourage safety.

28 ~~SEC. 4.~~

29 *SEC. 3.* Section 11751.8 of the Insurance Code is
30 amended to read:

31 11751.8. An insurer shall report to its rating
32 organization as corrections or revisions of losses, pursuant
33 to the unit statistical plan and uniform experience rating
34 plans approved by the commissioner, if any of the
35 following is applicable:

36 (a) A loss record detail was incorrectly reported
37 through mistake other than error of judgment.

38 (b) One or more claims are declared
39 noncompensable. A claim is declared noncompensable if
40 any of the following applies:

1 (1) There is an official ruling specifically holding that
2 a claimant is not entitled to benefits under the workers'
3 compensation laws of the state, even though the claimant
4 may have been awarded reimbursement for expenses
5 incurred by the claimant in presenting the case.

6 (2) No claim was filed during the period of limitation
7 provided by the workers' compensation laws for the filing
8 of the claim, and the carrier, therefore, closes the claim.

9 (3) Where the carrier contends, prior to the valuation
10 date, that a claimant is not entitled to benefits under the
11 workers' compensation laws and the claim is officially
12 closed because of the claimant's failure to prosecute the
13 claim.

14 (c) The carrier has recovered in an action against a
15 third party.

16 (d) A death claim has been compromised over the sole
17 issue of the applicability of the workers' compensation
18 laws of the state.

19 (e) The exposure has been reassigned to another
20 classification through the revision of an audit, in which
21 case the insurer shall file with the revision of exposure a
22 revision of losses that will reassign all claims to the
23 appropriate classification.

24 (f) A clerical error in either the classification
25 assignment or the type of injury assignment of a given
26 claim, or a group of claims, has been discovered by the
27 insurer.

28 (g) A clerical error in either the classification
29 assignment or the type of injury assignment of a given
30 claim has been discovered by the rating organization. The
31 insurer shall, when notified by the rating organization,
32 file a revision of losses or make satisfactory explanation.

33 (h) A correction is made in a classification assignment
34 of a given claim, or a group of claims, as a result of the
35 organization test audit of an insured for which the
36 experience has been submitted.

37 (i) The claim has been determined to be a joint
38 coverage claim in accordance with the unit statistical plan
39 approved by the commissioner.

1 (j) The aggregate of all claims *during the experience*
2 *period* have closed for 60 percent or less of their highest
3 reported incurred value.

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